IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 248 OF 2006
IN
ARBITRATION PETITION NO. 51 OF 2005

M.R. Shah Transport, a partnership firm registered under the Indian Partnership Act, 1932 having its office at Plot No.355, Section 12-B, M.R.Shah Chambers Gandhidham (Kutch) Gujarat 370 201 through their Constituted Attorney Mr. Poonam Chand Chauhan .. Appellants (Ori.Petitioner)

Versus

Hindustan Petroleum Corporation Ltd., a Government of India Enterprise, Through its Director (Marketing) having office at 8, Shoorji Vallabhdas Marg, Post Box No.155, Mumbai 400 001. .. Respondents

Mr. S.V. Marne for the appellants.

Mr. M.D. Siodia i/b M/s. Rustomjee & Ginwala for the respondents.

CORAM: R.M. LODHA, &
S.A. BOBDE, JJ.

DATED: 20TH DECEMBER, 2006

JUDGMENT : [Per R.M. Lodha, J.]

. This Appeal arises from the order dated 27th September, 2005, passed by the learned single Judge, whereby Arbitration Petition filed by the present appellants under Section 34 of the Arbitration and Conciliation Act, 1996 in challenging the Award dated

4th October, 2004, came to be dismissed. By the Award dated 4th October, 2004, the Arbitrator rejected the appellants' claim for increase in the agreed price of transportation on account of rise in the price of diesel.

2. The controversy arises in the facts that may be briefly indicated by us. In the month of May, 1999, the respondents viz. Hindustan Petroleum Corporation Limited (for short "HPCL") issued Tender Notice for transportation of LPG in bulk from refineries, storage locations etc. to various bottling plants in the country for initial period of 1st November, 1999 to 31st October, 2001 which was extendable for a further period of one year. On 14th May, 1999, pursuant to the said Tender Notice, the appellants submitted their quotation at the rate of Rs.1.11 per km per metric tonne. On 6th October, 1999, there was increase in the diesel price by the Government of India. On 19th November, 1999, the appellants informed HPCL that their tender rate was based on the diesel price prevailing on the date of the submission of the tender. They highlighted that the said rate would be the basis for escalation/ de-escalation. They, accordingly, stated that after submission of the tender whatever price in diesel has increased or would be increased till finalisation of the

tender should be taken into consideration. On 14th July, 2000, HPCL accepted the quotation and the offer made by the appellants on the terms set out in the communication dated 14th July, 2000. The said communication was subject matter of challenge in Writ Petition No. 1341 of 2000. The said Writ Petition was disposed of on 14th August, 2000, directing the petitioners therein to approach the Court of competent jurisdiction for adjudication of their dispute or take other proceedings such as arbitration, if available to them in law. Consequently, the appellants invoked the arbitration clause as contained in the contract and the dispute was referred to the sole arbitration of Shri A.B. Pai. On 7th May, 2003, the statement of claim was filed by the appellants. The reply was filed by the respondents along with counter claim on 27th May, 2003. The appellants filed their rejoinder on 24th September, 2003. The sole arbitrator on 4th October, 2004, rejected the appellants' claim. The appellants filed Arbitration Petition challenging the said Award dated 4th October, 2004. As indicated above, the Arbitration Petition was dismissed by the learned single Judge on 27th September, 2005, giving rise to the present Appeal.

3. We heard the counsel for the parties and perused the order of the learned single Judge as well as

the Award passed by the Arbitrator.

4. It is not in dispute that in their quotation, the appellants quoted the rate of Rs.1.11 per km. per metric tonne. On 19th November, 1999, the appellants submitted the revised offer, the relevant part whereof reads thus:

> "3. Our tender rate based on the diesel price prevailing on the date of submission of tender. That will be basis for Diesel Rate of Escalation de-excalation. So after submission of tender whatever prices in diesel has increased or will be increased till finalisation of Tender should be given and accordingly rate were quoted by us at time of submission of tender."

5. However, in their acceptance letter, HPCL clarified that for transportation of LPG the appellant shall be paid at the applicable rate for such loading base as mentioned in Annexure-I annexed thereto. It is not in dispute that in Annexure-I annexed with the letter accepting the appellants' offer and revised offer, the rate mentioned was Rs.1.11 per km per metric tonne. In this backdrop, the contention of the appellants that in the revised offer it was made clear by the appellants that the rate of escalation and

de-escalation shall be based on the diesel price prevailing on the date of submission of tender does not matter much. Ultimately, the concluded contract was at the rate of Rs.1.11 per km per metric tonne. Incidentally, it may be mentioned that the appellants in their letter dated 15th November, 1999, did clearly inform HPCL that their original offer dated 14th May, 1999 stands and there was no revision. In any case, it is clear from the agreement between the parties that HPCL in their acceptance letter made it very clear to the appellants that for transportation of LPG they shall be paid at the rate mentioned in Annexure-I annexed thereto. That the rate of Rs.1.11 per km per metric tonne was prescribed in that Annexure is not in dispute. In this view of the matter, the claim in excess was not eligible and rightly rejected by the Arbitrator. The learned single Judge cannot be said to have erred in rejecting the Arbitration Petition.

6. The Appeal has no merit and is dismissed with no order as to costs.

Sd/-
[R.M. LODHA, J.]

Sd/-

[S.A. BOBDE, J.]